

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DALE WILLIAMS,) Case No. C06-1784-RSL-JPD
Plaintiff,)
v.)
MICHAEL J. ASTRUE, Commissioner,) REPORT AND RECOMMENDATION
Social Security Administration,)
Defendant.)

Plaintiff Dale Williams appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”) which partially denied his application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-33 and 1381-83f, after a hearing before an Administrative Law Judge (“ALJ”). The parties agree that the case should be reversed and remanded; the sole issue is whether this Court should remand for further administrative proceedings or for a finding of disability and the immediate award of benefits. For the reasons set forth below, the Court recommends that the Commissioner’s decision be REVERSED and REMANDED for an award of benefits.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff is a fifty-five year old divorced man with a high school education and some credits toward a college degree. Administrative Record (“AR”) at 56, 533. He previously

01 worked as a machinist, a manufacturing engineer for the Boeing Company for over ten years,
02 and thereafter as a car salesman for a brief period. AR at 95, 231. Plaintiff was last gainfully
03 employed in October 2001. AR at 533.

04 On July 15, 2003, plaintiff applied for DIB and SSI benefits alleging an onset date of
05 October 31, 2001. AR at 56-58, 546. Plaintiff asserts that major depressive disorder, hearing
06 loss, and severe back pain have kept him from obtaining and maintaining employment of any
07 kind. AR at 15-16, 22; Dkt. No. 12 at 2-6.

08 The Commissioner denied plaintiff's claim initially and on reconsideration. AR at 27-
09 30, 32-33. On November 2, 2005, a disability hearing was held before the ALJ, who
10 eventually concluded that plaintiff was disabled from the period of September 1, 2002 through
11 February 1, 2004, but was not disabled thereafter based on his finding that plaintiff could
12 perform a range of light work existing in significant numbers in the national economy. AR at
13 23. Plaintiff's administrative appeal of the unfavorable portion of the ALJ's decision was
14 denied by the SSA Appeals Council, AR at 6-9, making the ALJ's ruling the "final decision" of
15 the Commissioner as that term is defined by 42 U.S.C. § 405(g). On December 13, 2006,
16 plaintiff timely filed the present action challenging the Commissioner's decision. Dkt. No. 1.

17 II. JURISDICTION

18 Jurisdiction to review the Commissioner's decision exists pursuant to 42 U.S.C. §§
19 405(g) and 1383(c)(3).

20 III. STANDARD OF REVIEW

21 This Court, pursuant to 42 U.S.C. § 405(g), may set aside the Commissioner's denial
22 of social security benefits when the ALJ's findings are based on legal error or not supported by
23 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th
24 Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is
25 such relevant evidence that a reasonable mind might accept as adequate to support a
26 conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881

01 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, settling
 02 conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews*
 03 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to meticulously
 04 examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment
 05 for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When
 06 the evidence of record is susceptible to more than one rational interpretation, it is the
 07 Commissioner's conclusion that must be upheld. *Id.*

08 If this Court determines that the ALJ committed reversible error, it has the discretion to
 09 remand for further proceedings or to award benefits. *McCartey v. Massanari*, 298 F.3d 1072,
 10 1076 (9th Cir. 2002). Remand for further proceedings is appropriate where additional
 11 proceedings would remedy defects in the ALJ's decision, *Rodriguez v. Bowen*, 876 F.2d 759,
 12 763 (9th Cir. 1989), and where the Commissioner is in a better position to evaluate the
 13 evidence. *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). Remand for an award of
 14 benefits is preferred where "the record has been fully developed and further administrative
 15 proceedings would serve no useful purpose." *McCartey*, 298 F.3d. at 1076; *Benecke v.*
 16 *Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004) (same). More specifically, erroneously rejected
 17 evidence should be credited and an immediate award of benefits directed where:

18 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [certain
 19 pertinent] evidence, (2) there are no outstanding issues that must be resolved
 20 before a determination of disability can be made, and (3) it is clear from the
 record that the ALJ would be required to find the claimant disabled were such
 evidence credited.

21 *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996); *see also Harman v. Apfel*, 211 F.3d
 22 1172, 1178 (9th Cir. 2000) (same).

23 IV. EVALUATING DISABILITY

24 As the claimant, Mr. Williams bears the burden of proving that he is disabled within the
 25 meaning of the Social Security Act ("the Act"). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th
 26 Cir. 1999). The Act defines disability as the "inability to engage in any substantial gainful

01 activity" due to a physical or mental impairment which has lasted, or is expected to last, for a
 02 continuous period of at least twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); 20
 03 C.F.R. §§ 404.1505(a), 416.905(a). A claimant is disabled under the Act only if his
 04 impairments are of such severity that he is unable to do his previous work, and cannot,
 05 considering his age, education, and work experience, engage in any other substantial gainful
 06 activity existing in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B); *see also*
 07 *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

08 The Commissioner has established a five-step sequential evaluation process for
 09 determining whether a person is disabled within the meaning of the Act. *See* 20 C.F.R. §
 10 404.1520. The claimant bears the burden of proof during steps one to four. At step five, the
 11 burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled or not disabled at
 12 any step in the sequence, the inquiry ends without need to consider subsequent steps.

13 Step one asks whether the claimant is presently engaged in "substantial gainful
 14 activity." 20 C.F.R. §§ 404.1520(b), 416.920(b).¹ If he is, disability benefits are denied. If he
 15 is not, the Commissioner proceeds to step two. At step two, the claimant must establish that
 16 he has one or more medically severe impairments, or combination of impairments, that limit his
 17 physical or mental ability to do basic work activities. If the claimant does not have such
 18 impairments, he is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does
 19 have a severe impairment, the Commissioner moves to step three to determine whether that
 20 impairment meets or equals any of the listed impairments described in the regulations. 20
 21 C.F.R. §§ 404.1520(d), 416.920(d). A claimant whose impairment meets or equals a listing
 22 for the twelve-month duration requirement is disabled. *Id.*

23 When the claimant's impairment neither meets nor equals one of the impairments listed

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 25 ¹ Substantial gainful activity is work activity that is both substantial, i.e., involves
 26 significant physical and/or mental activities, and gainful, i.e., performed for profit. 20 C.F.R. §
 404.1572.

01 in the regulations, the Commissioner must proceed to step four and evaluate the claimant's
 02 residual functional capacity ("RFC"). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the
 03 Commissioner evaluates the physical and mental demands of the claimant's past relevant work
 04 to determine whether he can still perform that work. *Id.* If the claimant is able to perform his
 05 past relevant work, he is not disabled; if the opposite is true, the burden shifts to the
 06 Commissioner at step five to show that the claimant can perform some other work that exists
 07 in significant numbers in the national economy, taking into consideration the claimant's RFC,
 08 age, education, and work experience. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the
 09 Commissioner finds the claimant is unable to perform other work, the claimant is disabled and
 10 benefits may be awarded.

11 When, as here, an ALJ grants disability insurance benefits to an applicant for a closed
 12 period of disability, additional sequential evaluation steps arise and two decision-making
 13 processes occur. First, the ALJ finds the applicant disabled and grants benefits. Second, the
 14 ALJ may engage in the "medical improvement" decision-making process to find that the
 15 disability ended at some date prior to the hearing such that a closed period of disability is
 16 proper. *See* 20 C.F.R. §§ 404.1594, 416.994.

17 V. DECISION BELOW

18 On March 27, 2006, the ALJ issued a decision granting in part and denying in part
 19 denying plaintiff's request for benefits, which found:

- 20 1. The claimant meets the nondisability requirements for a period of disability and
 21 Disability Insurance Benefits set forth in Section 216(I) of the Social Security
 Act and is insured for benefits through December 31, 2006.
- 22 2. The claimant has not engaged in substantial gainful activity since his alleged
 onset date.
- 23 3. The medical evidence establishes that the claimant has the following "severe"
 24 impairments: major depressive disorder, dysthymia, chronic pain syndrome, and
 hearing loss.
- 25 4. None of the claimant's impairments meets or equals the criteria of any
 26 impairment included in the *Listing of Impairments*.

01 5. The claimant's assertions concerning his ability to work cannot be fully
02 credited.

03 6. The claimant retains the residual functional capacity to lift and/or carry 20
04 pounds occasionally and 10 pounds frequently, to sit and to stand and/or walk
05 intermittently for a total of six hours in an eight hour workday. He may occasionally climb ra
scaffolds. He can occasionally stoop, crouch, and crawl. He is unable to work with hazards
(machinery, heights, etc.). The claimant's hearing is lessened by 50 percent, and his word
recognition is lessened by 35 percent. Despite his mental health impairment, he is able to
perform simple, repetitive tasks. He should avoid working with the public.

06 7. The claimant is unable to perform the requirements of his past relevant work,
07 which was in the following jobs: machinist, Dictionary of Occupational Titles
08 (DOT) # 601.280-054, which is medium, skilled work; engineer planner, DOT
09 # 003.161-014, which is light, skilled work; car sales, DOT # 273.353-101,
which is light, skilled work; and telemarketing, DOT # 299.357-014, which is
sedentary, semi-skilled work.

10 8. The claimant's residual functional capacity for the full range of light work is
11 reduced by additional limitations.

12 9. On the date he filed his application, the claimant was 48 years old, which the
13 regulations define as a "younger person." On March 6, 2002, he turned 50,
which the regulations define as "closely approaching advanced age."

14 10. The claimant has a high school education plus some college.

15 11. The claimant has some skilled and semi-skilled work experience, but none of
16 the claimant's skills acquired from prior work would transfer to any work that
he is now capable of performing.

17 12. Considering the claimant's exertional and nonexertional limitations, he was
18 unable, from September 1, 2002 to February 1, 2004[,] to make an adjustment
19 to any work that exists in significant numbers in the national economy because
he was unable to sustain a full and competitive work schedule on a regular and
continuing basis.

20 13. The claimant was under a disability, as defined in the Social Security Act, from
21 September 1, 2002 to February 1, 2004.

22 14. By February 1, 2004, the claimant experienced medical improvement, which
23 was related to the claimant's ability to perform work related activities in that he
24 was then able to sustain a full and competitive work schedule on a regular and
continuing basis.

25 15. From February 1, 2004, the claimant has been capable of making an adjustment
26 to work that exists in significant numbers in the national or regional economy,
in the following jobs: (1) small parts assembler, [DOT #] 706.684-022, which is
light, unskilled work, of which there are 500 jobs in Washington and 15,000 in
the national economy; and gate guard, DOT # 372.667-030, which is light

01 work, on the low end of semi-skilled work, of which 500 jobs exist in
 02 Washington and 20,000 in the national economy.

03 AR at 22-23.

04 **VI. ISSUES ON APPEAL**

05 The parties agree that the ALJ's decision below was deficient and should be reversed.
 06 More specifically, the Commissioner concedes that the ALJ erred in his assessment of
 07 plaintiff's credibility, erred in assessing plaintiff's physical RFC assessment, erred in his
 08 application of the "medical improvement" analysis, and erred in his step five finding that
 09 plaintiff perform "other work" as a gate guard and small parts assembler. Dkt. No. 20 at 11-
 10 15. Nevertheless, the Commissioner argues that the record does not clearly require a finding
 11 of disability.

12 The plaintiff raises the following primary allegations of error: (1) whether the ALJ
 13 provided clear and convincing reasons for rejecting plaintiff's testimony and finding him not
 14 fully credible; (2) whether the ALJ properly addressed and interpreted the medical expert
 15 testimony of Dr. Lewy; (3) whether the ALJ's physical RFC assessment is free of legal error
 16 and supported by substantial evidence; (4) whether the ALJ met his burden at step five; and (5)
 17 whether the ALJ properly found "medical improvement" under 20 C.F.R. §§ 404.1594,
 18 416.994. Dkt. No. 12 at 8-22.

19 The Commissioner does not directly contest these errors, but rather, urges that they be
 20 corrected upon remand. Dkt. No. 20. However, the parties disagree on the proper
 21 remedy—i.e., whether the case should be remanded for further administrative proceedings or
 22 for an immediate award of benefits.

23 **VII. DISCUSSION**

24 **A. The ALJ Erred in His Assessment of the Plaintiff's Testimony and Credibility**

25 Credibility determinations are particularly the province of the ALJ. *Andrews*, 53 F.3d
 26 at 1043. Nevertheless, when an ALJ discredits a claimant's testimony, he must articulate

01 specific and adequate reasons for doing so. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir.
 02 2006). The determination of whether to accept a claimant's subjective symptom testimony
 03 requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929; *Smolen*, 80 F.3d at 1281.
 04 First, the ALJ must determine whether there is a medically determinable impairment that
 05 reasonably could be expected to cause the claimant's symptoms. *Smolen*, 80 F.3d at 1281-82.
 06 Once a claimant produces medical evidence of an underlying impairment, the ALJ may not
 07 discredit the claimant's testimony as to the severity of symptoms solely because they are
 08 unsupported by objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir.
 09 1991) (en banc). Absent affirmative evidence that the claimant is malingering, the ALJ must
 10 provide "clear and convincing" reasons for rejecting the claimant's testimony. *Smolen*, 80 F.3d
 11 at 1284; *Reddick*, 157 F.3d at 722.

12 In doing so, the ALJ "must specifically identify what testimony is not credible and what
 13 evidence undermines the claimant's complaints" *Greger*, 464 F.3d at 972. General findings are
 14 insufficient. *Smolen*, 80 F.3d at 1284. The ALJ may consider "ordinary techniques of
 15 credibility evaluation," including the claimant's reputation for truthfulness, inconsistencies in
 16 testimony or between his testimony and conduct, daily activities, work record, and the
 17 testimony from physicians and third parties concerning the nature, severity, and effect of the
 18 symptoms of which he complains. *Id.*

19 Here, the ALJ found that certain behavior by the plaintiff "cast[ed] doubt" on his
 20 credibility and, for that reason, the ALJ did not fully credit plaintiff's testimony concerning his
 21 ability to perform work-related functions. *See* AR at 17, 22. The sole conduct cited by the
 22 ALJ was the plaintiff's inconsistent answers to his providers regarding his criminal history. AR
 23 at 17. Specifically, the ALJ noted that "[a] record from April of 2003[] makes it clear that the
 24 claimant has a criminal history," and then strongly emphasized that "on February 6, 2004, the
 25 claimant reported that he had 'never been arrested.'" AR at 17 (citing Ex. 5F/10, Ex. 20F/22,
 26 Ex. 20F/13); *see also* AR at 382. The ALJ concluded that "[w]hile a criminal history alone is

01 not sufficient to cast doubt on a claimant's credibility, an inconsistent report to his providers,
 02 regarding any subject, is." AR at 17.²

03 The problem with this reason is that the criminal history cited by the ALJ was not the
 04 plaintiff's. Rather, it belonged to a Mr. William Davis. AR at 196.³ Apart from this
 05 erroneous reason, the ALJ found that the plaintiff was "generally credible in his allegations,"
 06 AR at 17, which included the plaintiff's testimony that, *inter alia*, he could not perform a job
 07 that would require him to stand even intermittently during an eight-hour workday. AR at 549-
 08 50. The VE agreed with the ALJ in this regard, and testified that if plaintiff's testimony was
 09 found to be credible, he would be unable to work (or even get to work) at step five due to a
 10 marked limitation in concentration, persistence, and pace. AR at 560-61.

11 The ALJ is responsible for making credibility determinations, and this Court is not
 12 authorized to substitute its judgment for that of the ALJ. *Thomas*, 278 F.3d at 954. However,
 13 that power is not unfettered. Absent affirmative evidence showing that the claimant is
 14 malingering, the ALJ must provide clear and convincing reasons, supported by substantial
 15 evidence, for rejecting the claimant's testimony. *Reddick*, 157 F.3d at 722. The ALJ failed to
 16 do so here, and his oversight constitutes reversible error. Furthermore, save for this oversight,
 17 the ALJ determined that the claimant was credible. AR at 17. Because there are no
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19 ² The Commissioner insists that the ALJ provided an additional reason for discounting
 20 the plaintiff's credibility when the ALJ stated, amid his written credibility analysis, that the
 21 plaintiff had "nevertheless been able to perform work related activities since February of 2004"
 22 and was "able to function at a level that would allow him to work." AR at 17-19; Dkt. No. 20
 23 at 11-12. However, this is a legal conclusion regarding plaintiff's prospective abilities at step
 24 five, and as such, has little or nothing to do with the plaintiff's credibility or the *actual*
 25 transferrable activities that might provide a window into that credibility.

26 ³ The Commissioner has conceded that pages 196 and 197 of the administrative record
 27 constitute criminal records pertaining to an individual other than the plaintiff, and the Court has
 28 since redacted those pages from the record. *See* Dkt. Nos. 17, 19. This, however, does not
 29 negate the fact that such pages were cited and heavily relied upon by the ALJ when making his
 30 credibility determination.

01 outstanding credibility issues that must be resolved before a determination of disability can be
 02 made, and because it is clear from the record that the ALJ would be required to find the
 03 claimant disabled were he found to be credible and the VE's testimony credited, further
 04 proceeding would serve no useful purpose. *Harman*, 211 F.3d at 1178; *Smolen*, 80 F.3d at
 05 1292. Accordingly, remand for an award of benefits is proper.⁴

06 B. The ALJ Failed to Properly Address the Medical Expert's Testimony

07 The ALJ's written opinion acknowledges full agreement with the testimony of Dr.
 08 Lewy, the medical expert ("ME"), at step three and step four. *See* AR at 16-17, 21. Indeed,
 09 in finding sufficient "medical improvement" to terminate benefits on February 1, 2004, the ALJ
 10 relied primarily, if not solely, on the ME's conclusions regarding the effect of medication on
 11 plaintiff's severe impairments. AR at 21, 23. *See, e.g.*, AR at 21 ("I find that the claimant's
 12 disability ended on February 1, 2004 because the claimant's symptoms were stabilized by then
 13 on his medication. *See* testimony of Dr. Lewy.").

14 This constitutes reversible error. The ME never testified or otherwise concluded that
 15 plaintiff's condition had "improved." Rather, upon his review of the entire medical record,
 16 the ME concluded that the plaintiff continued to have marked limitations in concentration,
 17 persistence, and pace, and further stated as follows:

18 What the record shows, Your Honor, is that there is essentially chronic
 19 depression which may have been kept stable by the medications that Mr. Williams takes,
 20 although it hasn't led to any remission in his depression. There is ongoing flat affect, reports
 21 of fatigue, sleep disturbance, lack of energy.
 22 AR at 555.

23 This statement reflects ongoing impairments, or no change in plaintiff's condition,
 24 either positive or negative. Such an interpretation is further corroborated by the ME's
 25 conclusion, at the date of the hearing, that the plaintiff continued to suffer from the marked

26 ⁴ Because this finding results in a remand for the award of benefits, the Court eschews
 27 an exhaustive analysis of the additional reversible errors in this case.

01 limitations in concentration, persistence, and pace that would “make[] it difficult for a person
 02 to work.” *See* AR at 560; *see also* AR at 556 (testifying “*at this point*, Your Honor, I see . . .
 03 marked limitations in concentration, persistence, and pace.”) (emphasis added).⁵

04 In his brief, the Commissioner insists that the ALJ equated medical stabilization with
 05 medical improvement, and argues that this conclusion was not unreasonable. The Court
 06 disagrees because the applicable regulations do not permit such a definition. Rather, medical
 07 improvement is defined as “any *decrease* in the medical severity of [the claimant’s]
 08 impairment(s),” a determination which “*must* be based on changes (*improvement*) in the
 09 symptoms, signs, and/or laboratory findings associated with [the claimant’s] impairment(s).”
 10 20 C.F.R. § 404.1594(b)(1) (emphasis added); *see also id.* § 404.1594(b)(3) (explaining that a
 11 medical improvement may warrant the termination of benefits if it creates an “*increase* in [the]
 12 functional capacity to do basic work activities.”) (emphasis added). Under this or any similar
 13 definition, while the Court can conceive of many rational interpretations of the ME’s
 14 testimony, the Court finds that it would be irrational to conclude that the ME found medical
 15 *improvement*, as opposed to a lack of remission or subsidence.

16 C. The ALJ Erred in His Conclusions Regarding the Plaintiff’s Physical RFC

17 While the foregoing analysis alone supports a remand for the award of benefits, the
 18 Court also notes that the ALJ’s concluded that plaintiff retained the RFC “to lift and/or carry
 19 20 pounds occasionally and 10 pounds frequently, to sit and to stand and/or walk
 20 intermittently for a total of six hours in an eight hour workday.” AR at 22. The
 21 Commissioner argues that this finding suffers from, at most, “a semantic lack of clarity,” and is
 22 curable by a remand for further proceedings. Dkt. No. 20 at 13-14. Alternatively, the
 23 Commissioner argues that the ALJ’s above-quoted finding could be reasonably interpreted as a

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 25 ⁵ If, as it appears, the ALJ agreed with the ME’s conclusions, the plaintiff’s testimony,
 26 and Dr. West’s opinions in this regard, plaintiff would be disabled pursuant to Medical-
 Vocational Rule 201.14. This conclusion is discussed further below. *See infra* § VII.C.

01 finding that plaintiff “could sit six hours total, stand six hours total, and walk six hours total”
02 in a single workday. Dkt. No. 20 at 13.

03 The Court disagrees with both arguments. First, if plaintiff can work for only six hours
04 in a workday at step five, he is disabled, as discussed below. *See* 20 C.F.R. § 404, Subpt. P.,
05 App. 2, Table 1, R. 201.14 (2006); SSR 96-8p. Second, if the ALJ determined that the
06 plaintiff could perform these three activities “*for a total*” of six hours a day, it therefore
07 follows that plaintiff would be unable to stand or walk for an additional total of the same
08 period, and thus would be unable to perform light work. This conclusion is corroborated by
09 the ALJ’s statement that his “assessment of the claimant’s physical abilities is . . . generally
10 consistent with a consultative examination from March of 2004 with [Dr.] Raymond West,”
11 who specifically opined that plaintiff could stand or walk for a total of only *four* hours in a
12 given workday. AR at 18 (citing AR at 291). Third and finally, while the ALJ’s RFC
13 determination could theoretically produce several rational interpretations, an eighteen hour
14 functional capacity would not be one of them.

15 Accordingly, under the foregoing finding as stated by the ALJ and corroborated by the
16 ME, VE, and the medical record, plaintiff is disabled pursuant to Medical-Vocational Rule
17 201.14. Specifically, if plaintiff had marked limitations in concentration, persistence, and pace,
18 and was unable to stand or walk for six hours in an eight-hour workday, he would be limited
19 to sedentary work, not light work. SSR 83-10. Plaintiff was fifty-one years of age in
20 February 2004, has a high school education, and was found by the ALJ to possess no
21 transferrable skills. AR at 23. A claimant with a high school education and an RFC which
22 limits him to sedentary work is disabled at step five upon his fiftieth birthday if he lacks skills
23 transferrable to other work. 20 C.F.R. § 404, Subpt. P., App. 2, Table 1, R. 201.14 (2006).

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D. No Outstanding Issues Must be Resolved Before a Disability Determination Can be Made, and the Evidence of Record Requires the ALJ to Find the Plaintiff Disabled During the Relevant Period

In light of the foregoing analysis, remanding this case for further proceedings simply to re-apply each step of the “medical improvement” analysis, or solely to give the ALJ a chance to correct other minor errors would “serve no useful purpose and would unnecessarily extend [plaintiff]’s long wait for benefits.” *Benecke*, 379 F.3d at 595. Specifically, the Court finds that the plaintiff’s testimony was erroneously rejected based on a criminal history report of a third party, and should be credited in light of the ALJ’s remaining credibility finding and agreement with the conclusions of the ME. The plaintiff’s testimony, when coupled with the conclusions of the VE, the ME, and the balance of the record, establish that plaintiff is unable to perform his past relevant work or engage in other substantial gainful activity available in significant numbers in the national economy.

VIII. CONCLUSION

The ALJ failed to provide legally sufficient reasons for finding the plaintiff not fully credible and failed to properly address the ME's testimony, both of which led to further errors, as discussed above. No outstanding issues must be resolved before a determination of disability can be made, and the ALJ would be required to find the claimant disabled upon the evidence provided and the conclusions that have already been made. Accordingly, this case should be REVERSED and REMANDED for an award of benefits. A proposed order accompanies this report and recommendation.

DATED this 5th day of September, 2007.

James P. Donohue
JAMES P. DONOHUE
United States Magistrate Judge